

Chapter 5

Non-Competitively Bid (NCB) Contracts

Table of Contents

Non-Competitively Bid (NCB) Contracts	1
Chapter 5.....	3
Non-Competitively Bid (NCB) Contracts	3
Overview	3
Introduction	3
Contents	3
Topic 1- Non-Competitively Bid (NCB) Contracts and Purchasing Authority	4
5.1.0 NCB contracting	4
5.1.1 Emergency purchases	4
5.1.2 NCB contract purchasing authority	4
5.1.3 \$25,000.00 maximum	4
5.1.4 NCB contract justification methods.....	4
5.1.5 NCB justification documents.....	5
5.1.6 Signature authority	5
5.1.7 Notice of Contract Award (NCA).....	6
5.1.8 File documentation	7
5.1.9 Reporting requirements	7
Topic 2 – NCB Contract Justification Process.....	8
5.2.0 NCB contract process.....	8
5.2.1 NCB denied	10
5.2.2 Less than \$5,000.00	10
5.2.3 LPA transactions and NCB	10
5.2.4 Known suppliers outside LPAs	11
5.2.5 Review MA user instructions	11
Topic 3 – Purchase Document Amendments and the NCB Contract Justification.....	12
5.3.0 Amendment requirements based on cumulative dollar value	12
5.3.1 When an amendment does not require an NCB.....	12
5.3.2 When NCB process is applicable	13
5.3.3 Original transaction valued less \$5,000.00.....	13
Topic 4 – Special Category NCB Contract Request (SCR).....	14
5.4.0 SCR definition.....	14
5.4.1 Individual SCR for each category	14
5.4.2 SCR dollar threshold and duration	14
5.4.3 SCR reference number assigned	14
5.4.4 Executing the purchase	14
5.4.5 Tracking SCR purchases.....	15
5.4.6 SCR usage oversight.....	15
Topic 5 – Proprietary Software Purchases.....	16
5.5.0 Existing proprietary software maintenance/ upgrade renewal contracts	16
5.5.1 New proprietary software	18
5.5.2 Obtaining software letters and the LPA process	19
5.5.3 Fair and reasonable documentation	19

Topic 6 – Purchases Exempt from the NCB Contract Process	20
5.6.0 Purchases exempt by statute or policy	20
5.6.1 Additional purchases exempt by DGS policy	20
5.6.2 Supporting statement	20
5.6.3 Cost reasonableness	21
Topic 7 – Procurement Approach for Exempt and NCB Contract Activities	22
5.7.0 Obtaining pricing	22
5.7.1 Creating a solicitation	22
5.7.2 Supplier contracts and forms	22
5.7.3 Signing a suppliers' software licenses is prohibited	22

Chapter 5

Non-Competitively Bid (NCB) Contracts

Overview

Introduction

An important principle of state purchasing is to promote and provide for open and fair competition when competition is known to exist. This chapter describes the process departments must follow when executing a transaction where no known competition exists. Also described is what purchasing authority is necessary before executing an NCB contract, what requirements shall be followed at the various dollar thresholds, what forms are necessary, and what is involved when a department has a significant number of repeat NCB contracts for a particular category of goods or services.

Also included in this chapter is a description of the purchasing processes for executing purchase documents for proprietary software for those departments granted IT purchasing authority.

Contents

This chapter contains the following topics:

Topic	See Page
Topic 1 – Non-Competitively Bid (NCB) Contracts and Purchasing Authority	4
Topic 2 – NCB Contract Justification Process	8
Topic 3 – Purchase Document Amendments and the NCB Contract Justification	12
Topic 4 – Special Category NCB Contract Request (SCR)	14
Topic 5 – Proprietary Software Purchases	16
Topic 6 – Purchases Exempt from the NCB Contract Process	20
Topic 7 – Procurement Approach for Exempt and NCB Contract Activities	22

Topic 1- Non-Competitively Bid (NCB) Contracts and Purchasing Authority

5.1.0 NCB contracting

NCB contracts are limited by statute in accordance with PCC section 10301 for non-IT goods and PCC section 12102 for IT goods and services to the following conditions:

- Emergencies, where immediate acquisition is necessary for the protection of the public health, welfare or safety or;
 - Proposed acquisition of goods and services are the only goods and services that meet the State's need.
-

5.1.1 Emergency purchases

Refer to [Chapter 2](#)- Section B, Topic 7 – Emergency Purchases detailing the process for executing emergency purchases.

5.1.2 NCB contract purchasing authority

NCB contract authority is authorized to coincide with each purchasing authority type (non-IT or IT). Consequently, if a department elects to only apply for non-IT purchasing authority, then NCB authority will be granted only for non-IT goods and LPA non-IT goods and services. Conversely, if a department elects to only apply for IT purchasing authority, then NCB authority will be granted only for IT goods and services.

5.1.3 \$25,000.00 maximum

Regardless of the purchasing authority type granted, a department's NCB contract purchasing category will be authorized a maximum dollar threshold not to exceed \$25,000.00 per transaction excluding sales and use tax, finance charges, postage and handling. Shipping charges are also excluded from the dollar threshold limits unless the shipping charge is included in the evaluation such as FOB Origin, Freight Collect or FOB Destination.

5.1.4 NCB contract justification methods

There are two methods for justifying NCB contracts as follows:

- NCB contract justifications executed on an individual basis.
- Special Category NCB Request (SCR), where a department determines that a significant number of repeat NCB contracts for a particular category of goods and/or services will occur during a specified period of time.

Refer to Topic 4 of this [chapter](#) for additional details regarding SCR.

Continued on next page

Topic 1- Non-Competitively Bid (NCB) Contracts and Purchasing Authority, Continued

5.1.5 NCB justification documents

Departments must use the following forms when submitting NCB contract justification documents and/or SCR documents. No substitute format will be accepted.

Click here to access the NCB Contract Justification. [Word](#) [PDF](#)

Click here to access the SCR. [Word](#) [PDF](#)

[Click](#) here to access the Contract Advertising Exemption Request (STD.821). This form must accompany all NCB and SCR requests for services, both non-IT and IT.

5.1.6 Signature authority

Buyers executing NCB contract justifications, either as an individual request or an SCR, shall secure their agency secretary and department director or the immediate next highest-ranking officer signature(s) for each level regardless of whether or not the justification is submitted to DGS/PD for approval.

For entities not reporting to an Agency Secretary, approval authority is limited to the highest two ranking executive officials.

Note: NCB signature approval authority may not be delegated further then the next highest-ranking official for each level. All signatures must be originals.

Continued on next page

Topic 1- Non-Competitively Bid (NCB) Contracts and Purchasing Authority, Continued

5.1.7 Notice of Contract Award (NCA)

Buyers, in addition to completing the NCB contract justification must submit an NCA within 5 working days of contract award to DGS/PD for all DGS/PD approved NCB contracts. Specifically, an NCA is required for executed NCB contracts that exceed a department's purchasing authority for NCB contract approval, but do not exceed a department's approved dollar threshold for non-IT and/or IT purchasing authority as applicable to the purchase. A copy of the completed NCA must be retained in the procurement file.

Example:

A department is processing an IT goods and services NCB contract request valued at \$75,000.00. The department's IT purchasing authority for NCB contract approval is \$25,000.00 and its IT purchasing authority is \$500,000.00. The buyer must submit an NCB contract justification to and receive approval from DGS/PD/TAS prior to executing the purchase document. If DGS/PD/TAS approves the NCB contract justification, then the department may proceed in executing the purchase document under its IT purchasing authority. The department executing the purchase document must complete and submit an NCA to DGS/PD within 5 days of contract award.

Note: The purchase document is submitted with the NCB justification only when the purchase exceeds the department's purchasing authority limit.

Click here to access the NCA. [Word](#) [PDF](#)

Continued on next page

Topic 1- Non-Competitively Bid (NCB) Contracts and Purchasing Authority, Continued

5.1.8 File documentation

[Click](#) here to access a file documentation list for NCB contracts.

5.1.9 Reporting requirements

Refer to [Chapter 12](#) - Reporting Requirements for NCB contract reporting requirements.

Topic 2 – NCB Contract Justification Process

5.2.0 NCB contract process

The following chart describes the NCB contract justification process for both non-IT and IT purchasing authority types. This process is also applicable to NCB purchases processed as an LPA and when executing amendments to purchase documents.

Stage	Who	Does What										
1	Department	Determines a need to acquire a product from a supplier who is the only known source. Completes an NCB contract justification, securing approval signatures from the Agency Secretary and Department Director or next highest-ranking official for each level.										
2	Department	Creates the purchase package as follows:										
		<table><tr><th>If the purchase is</th><th>Then the department</th></tr><tr><td>Within the department's NCB contract approval purchasing authority threshold of \$25,000.00.</td><td><ul style="list-style-type: none">• Retains the approved NCB contract justification within the procurement file.• Executes the purchase document (STD.65 or STD.213 for IT goods and services).• Reports the transaction on the Quarterly NCB contract report to the DGS-PD.</td></tr><tr><td>Exceeds the department's NCB purchasing authority <u>but is within the department's approved purchasing authority threshold.</u></td><td><ul style="list-style-type: none">• Submits to DGS/PD for review and approval the following:• NCB contract justification.• A completed STD.821, if the purchase is for services.</td></tr><tr><td>Exceeds both the department's NCB contract approval and purchasing authorities</td><td><p>Submits as applicable to DGS/PD for review and approval the following:</p><ul style="list-style-type: none">• NCB contract justification.• IT Services<ul style="list-style-type: none">▪ A completed STD.821 and▪ A signed STD.213 for IT Goods and Services Only.• Purchase Estimate (STD.66) for non-IT or IT Goods.</td></tr><tr><td>Requested by a department without any type of purchasing authority.</td><td><p>Submits to DGS/PD for review and approval the following:</p><ul style="list-style-type: none">• NCB contract justification.• Purchase Estimate (STD.66).• A memo to DGS/PD/TAS if the NCB request is for IT services.</td></tr></table>	If the purchase is	Then the department	Within the department's NCB contract approval purchasing authority threshold of \$25,000.00.	<ul style="list-style-type: none">• Retains the approved NCB contract justification within the procurement file.• Executes the purchase document (STD.65 or STD.213 for IT goods and services).• Reports the transaction on the Quarterly NCB contract report to the DGS-PD.	Exceeds the department's NCB purchasing authority <u>but is within the department's approved purchasing authority threshold.</u>	<ul style="list-style-type: none">• Submits to DGS/PD for review and approval the following:• NCB contract justification.• A completed STD.821, if the purchase is for services.	Exceeds both the department's NCB contract approval and purchasing authorities	<p>Submits as applicable to DGS/PD for review and approval the following:</p> <ul style="list-style-type: none">• NCB contract justification.• IT Services<ul style="list-style-type: none">▪ A completed STD.821 and▪ A signed STD.213 for IT Goods and Services Only.• Purchase Estimate (STD.66) for non-IT or IT Goods.	Requested by a department without any type of purchasing authority.	<p>Submits to DGS/PD for review and approval the following:</p> <ul style="list-style-type: none">• NCB contract justification.• Purchase Estimate (STD.66).• A memo to DGS/PD/TAS if the NCB request is for IT services.
		If the purchase is	Then the department									
		Within the department's NCB contract approval purchasing authority threshold of \$25,000.00.	<ul style="list-style-type: none">• Retains the approved NCB contract justification within the procurement file.• Executes the purchase document (STD.65 or STD.213 for IT goods and services).• Reports the transaction on the Quarterly NCB contract report to the DGS-PD.									
		Exceeds the department's NCB purchasing authority <u>but is within the department's approved purchasing authority threshold.</u>	<ul style="list-style-type: none">• Submits to DGS/PD for review and approval the following:• NCB contract justification.• A completed STD.821, if the purchase is for services.									
Exceeds both the department's NCB contract approval and purchasing authorities	<p>Submits as applicable to DGS/PD for review and approval the following:</p> <ul style="list-style-type: none">• NCB contract justification.• IT Services<ul style="list-style-type: none">▪ A completed STD.821 and▪ A signed STD.213 for IT Goods and Services Only.• Purchase Estimate (STD.66) for non-IT or IT Goods.											
Requested by a department without any type of purchasing authority.	<p>Submits to DGS/PD for review and approval the following:</p> <ul style="list-style-type: none">• NCB contract justification.• Purchase Estimate (STD.66).• A memo to DGS/PD/TAS if the NCB request is for IT services.											

Continued on next page

Topic 2 – NCB Contract Justification Process, Continued

5.2.0 NCB contract process (continued)

Stage	Who	Does What								
3	DGS/PD	Processes the transaction as follows:								
		<table><tr><th>If the purchase</th><th>Then DGS/PD will</th></tr><tr><td>Exceeds the department's NCB contract approval purchasing authority <u>but is within the department's approved purchasing authority threshold.</u></td><td><ul style="list-style-type: none">• Review and approve NCB contract justification.• Return approved NCB to department for purchase document execution.</td></tr><tr><td>Exceeds both the department's NCB contract approval and purchasing authorities</td><td><ul style="list-style-type: none">• Review the NCB justification• Conducts the appropriate procurement method.• Process and execute a purchase document on behalf of the department.</td></tr><tr><td>Requested by a department without any type of purchasing authority</td><td><ul style="list-style-type: none">• Review and approve the NCB justification.• Conducts the appropriate procurement method.• Process and execute a purchase order on behalf of the department.</td></tr></table>	If the purchase	Then DGS/PD will	Exceeds the department's NCB contract approval purchasing authority <u>but is within the department's approved purchasing authority threshold.</u>	<ul style="list-style-type: none">• Review and approve NCB contract justification.• Return approved NCB to department for purchase document execution.	Exceeds both the department's NCB contract approval and purchasing authorities	<ul style="list-style-type: none">• Review the NCB justification• Conducts the appropriate procurement method.• Process and execute a purchase document on behalf of the department.	Requested by a department without any type of purchasing authority	<ul style="list-style-type: none">• Review and approve the NCB justification.• Conducts the appropriate procurement method.• Process and execute a purchase order on behalf of the department.
		If the purchase	Then DGS/PD will							
		Exceeds the department's NCB contract approval purchasing authority <u>but is within the department's approved purchasing authority threshold.</u>	<ul style="list-style-type: none">• Review and approve NCB contract justification.• Return approved NCB to department for purchase document execution.							
Exceeds both the department's NCB contract approval and purchasing authorities	<ul style="list-style-type: none">• Review the NCB justification• Conducts the appropriate procurement method.• Process and execute a purchase document on behalf of the department.									
Requested by a department without any type of purchasing authority	<ul style="list-style-type: none">• Review and approve the NCB justification.• Conducts the appropriate procurement method.• Process and execute a purchase order on behalf of the department.									
4	Department	<p>Executes purchase document upon DGS approval of NCB contract justification. Completes and submits to DGS/PD an NCA within 5 days of contract award for those NCB contract justifications that exceed the department's NCB contract purchasing authority but are within the department's general purchasing authority threshold. A copy of the NCA document is retained in the department's procurement file.</p> <p>Click here to access the Notice of Contract Award. Word PDF</p>								

Continued on next page

Topic 2 – NCB Contract Justification Process, Continued

5.2.1 NCB denied

If the NCB contract justification is denied, DGS/PD will contact the department and discuss the following options:

When the purchase	Then DGS/PD will
Exceeds the department's NCB purchasing authority <u>but is within the department's approved purchasing authority threshold</u>	<ul style="list-style-type: none">• Advise the department to conduct a competitive solicitation or• Cancel the request.
Is requested by a department without any type of purchasing authority	<ul style="list-style-type: none">• Conduct a competitive solicitation to acquire the same or equivalent product or,• The department may withdraw the NCB contract justification and STD.66 and cancel the request.

5.2.2 Less than \$5,000.00

An NCB contract justification is not required for purchases less than \$5,000.00 of IT goods and services, non-IT goods, and both non-IT/IT LPA transactions for goods and services if fair and reasonable pricing has been established and documented. Examples of fair and reasonable pricing methods are described in [Chapter 4](#), Section C, Topic 2. Documentation to support fair and reasonable pricing must be retained in the procurement file. Refer to [Chapter 4](#), Section C, Topic 1

5.2.3 LPA transactions and NCB

Departments granted LPA purchasing authority must adhere to the NCB contract approval process if only one supplier is known to sell the products and/or services needed and offers cannot be obtained within the LPA contracts available.

Exception: The NCB contract justification process is not required if an individual LPA user instructions or the Statewide Checklist designates that the contract is exempt from obtaining 3-offers or if the value of the transaction is under \$5,000.00 and fair and reasonable pricing has been established and documented.

Buyers are reminded to always refer to individual LPA user instructions and all LPA supplements prior to initiating any LPA purchase. Refer to [Chapter 6](#) and Topic 2 of this [chapter](#) for further information.

Continued on next page

Topic 2 – NCB Contract Justification Process, Continued

5.2.4 Known suppliers outside LPAs

Departments must conduct a competitive solicitation if suppliers are known outside of CMAS contractors or Master Agreement contracts that can meet the department's requirements.

If only one LPA source is known (competing offers cannot be obtained), the NCB contract approval process must be followed.

5.2.5 Review MA user instructions

Departments must carefully review individual MA user instructions to determine if the MA is exempt from competitive bidding.

Refer to the DGS/PD web page at www.pd.dgs.ca.gov and review the Statewide Checklist. If an LPA is exempt, it is denoted by a "Yes" in the column titled "Exempt".

Topic 3 – Purchase Document Amendments and the NCB Contract Justification

5.3.0 Amendment requirements based on cumulative dollar value

The requirements for amending existing purchase documents are based on the cumulative dollar value of the purchase after including the amendment.

Example:

A \$200,000.00 contract plus a \$60,000.00 amendment shall be considered a \$260,000.00 contract. The processing of an amendment through the NCB approval cycle is based upon the amended total value of the contract.

5.3.1 When an amendment does not require an NCB

Amendments to existing purchase documents are not subject to the NCB contract requirements if the following occurred:

- Competitively bid contracts for both non-IT goods and IT goods and services:
 - Which included option(s) for changes (e.g., quantity or time) may be amended consistent with the terms of the original contract providing for such amendment(s) if such options were evaluated during the solicitation process.
- CMAS and Master Agreements for non-IT goods and IT goods and services:
 - Original orders, which include options for changes (e.g., quantity or time), that were evaluated and considered in the selection for award during the Request for Offer (RFO) process, may be amended consistent with the terms of the original order, provided that the original order allowed for amendments.
- CMAS and Master Agreements for non-IT services:
 - Original orders, which do not include options for changes (e.g., quantity or time), may be amended. This only applies to the first amendment, the time shall not exceed one year, or add not more than 30% of the original order value, not to exceed \$250,000.00. The original purchase document must have permitted amendments. Outside of these conditions, the NCB process must be followed.
- Competitive contracts and LPA orders amended for incidental omissions such as:
 - Transposition of numbers from the solicitation bid response or Request for Offer (RFO) response to the purchase document, or for inadvertent failures to include such things as contact names or for mistyped addresses. This does not apply to changes in quantity or time.

Continued on next page

Topic 3 – Purchase Document Amendments and the NCB Contract Justification, Continued

5.3.2 When NCB process is applicable

If the original transaction, either competitive or LPA, did not evaluate option(s) for changes, then the amendment must comply with the NCB process. This includes amendments for increases and decreases to quantity and time.

5.3.3 Original transaction valued less \$5,000.00

The NCB process must be followed if an amendment will cause the original transaction amount to exceed \$5,000.00 and above and the original transaction was awarded using fair and reasonable methodology. This also applies to LPA's unless otherwise instructed by individual user instructions.

Topic 4 – Special Category NCB Contract Request (SCR)

5.4.0 SCR definition

An SCR represents categories of contracts for the purchase of goods or services necessary to achieve a department's program objectives in a timely manner, where DGS has determined in advance and in writing, that for a specific type of category of goods or services there is no viable competition, or that due to critical time requirements such competition cannot be completed by the exercise of reasonable efforts prior to the time such goods or services are required.

Click here to access the SCR. [Word](#) [PDF](#)

Refer to Topic 1 of this [chapter](#) for approval signature requirements.

5.4.1 Individual SCR for each category

An SCR must be completed and approved for each category of non-IT goods, IT goods or IT services being requested and submitted to DGS/PD for consideration and approval.

5.4.2 SCR dollar threshold and duration

All SCRs have a maximum annual authorized dollar limit and expire one calendar year from the date of DGS/PD approval unless renewed by submission of a new SCR 30 days prior to expiration.

5.4.3 SCR reference number assigned

Each approved SCR will be assigned an SCR reference number by DGS/PD. This SCR number must be recorded on any purchase document executed under the SCR approval. This is in addition to the department's approved purchasing authority number.

5.4.4 Executing the purchase

Departments with purchasing authority may proceed with execution of purchase documents in accordance with an approved SCR. The SCR number must be entered on each applicable purchase document.

DGS/PD must execute all approved SCR purchase documents for departments without purchasing authority and for transactions exceeding a department's purchasing authority. In these instances, the requesting department will submit purchase requests on a Purchase Estimate (STD.66) for non-IT or IT goods and by submitting a memo to DGS/PD for IT services and must include the approved SCR number.

Continued on next page

Topic 4 – Special Category NCB Contract Request (SCR), Continued

5.4.5 Tracking SCR purchases

Departments must track all SCR purchase documents executed under an approved SCR authority, including transactions processed on a purchase estimate by the DGS, and provide reports to DGS/PD as requested.

Information to be tracked will include at a minimum the following:

- Special Category approval number issued by DGS/PD.
- Contract number (STD.213 for IT Goods and Services Only), GSOP-1 number (purchase order issued by DGS), and/or agency order number (STD.65, PINDEL.65 or any version of PINDEL.65 generated from the PIN system, etc.).
- Dates of transactions.
- Dollar amounts of transactions.
- Supplier names.

5.4.6 SCR usage oversight

Purchase documents executed under an approved SCR will be reviewed when a purchasing authority compliance review is scheduled or during the department's annual purchasing authority renewal process.

Topic 5 – Proprietary Software Purchases

5.5 0 Existing proprietary software maintenance/upgrade/renewal contracts

The following chart provides the process that departments will follow in acquiring existing proprietary software maintenance and/or upgrade/renewal contracts. Regardless of how the software purchase is executed, the department shall retain in its procurement files all documentation as required and a statement that supports why the transaction is exempt from competitive solicitation and NCB justification.

If the software purchase	Then the department
Is within the department's approved IT purchasing authority	May execute the purchase as follows: <ul style="list-style-type: none">• No NCB justification is required.• A signed letter must be obtained from the software publisher/ manufacturer stating that the product/service being acquired is not available through any other source. (This serves as documentation to support the non-competitive status of the purchase.)• The purchase document <u>may not exceed</u> the department's IT purchasing authority.• Approval by the agency secretary and the department director (or next ranking official) must be secured prior to award on the purchase document (STD.65 or STD.213-Standard Agreement for IT goods and services) for any transaction that exceeds \$250,000.
Exceeds the department's approved IT purchasing authority	<ul style="list-style-type: none">• Must submit the transaction to DGS/PD on a Purchase Estimate (STD.66) for DGS/PD to conduct the procurement and execute the contract.• Must obtain and provide the necessary documentation to DGS/PD in support of the non-competitive status of the contract. (Refer to the previous box on type of information required.)• DGS/PD will be the repository for all of the software publisher/manufacturer letters when DGS/PD is the approving authority.

Continued on next page

Topic 5 – Proprietary Software Purchases, Continued

5.5 0 Existing proprietary software maintenance/ upgrade renewal contracts (continued)

If the software purchase	Then the department
Is requested by a department without IT purchasing authority	<ul style="list-style-type: none">• Must submit the transaction to DGS/PD on a Purchase Estimate (STD.66) for DGS/PD to conduct the procurement and execute the contract.• Must obtain and provide the necessary documentation to DGS/PD in support of the non-competitive status of the contract. (Refer to the previous box on type of information required.)• DGS/PD will be the repository for all of the software publisher/manufacturer letters when DGS/PD is the approving authority.

Continued on next page

Topic 5 – Proprietary Software Purchases, Continued

5.5.1 New proprietary software

The following chart provides the process that departments will follow in acquiring new proprietary software, which may also include software maintenance, and is available from only one supplier. Regardless of how the software purchase is executed, the department shall retain in its procurement files all documentation as required and a statement that supports why the transaction is exempt from competitive solicitation and NCB contract justification.

If the software purchase	Then the department
Is within the department's approved IT purchasing authority	<p>May execute the purchase as follows:</p> <ul style="list-style-type: none">• An NCB justification is:<ul style="list-style-type: none">✓ Not required for transactions valued at \$250,000.00 or less.✓ Is required for transactions exceeding \$250,000.00 and must be approved by agency director and department director or next ranking official and submitted to DGS/PD for approval.• A signed letter must be obtained from the software publisher/manufacturer stating that the products/service being acquired is not available through any other source. (This serves as documentation to support the non-competitive status of the purchase.)• The purchase document may not exceed the department's IT purchasing authority.• Approval by the agency secretary and the department director (or next ranking official) must be secured prior to award on the purchase document (STD.65 or STD.213-Standard Agreement for IT goods and services) for any transaction that exceeds \$250,000.
Exceeds the department's approved IT purchasing authority	<ul style="list-style-type: none">• Must submit the transaction to DGS/PD on a Purchase Estimate (STD.66) for DGS/PD to conduct the procurement and execute the contract.• Must obtain and provide the necessary documentation to DGS/PD in support of the non-competitive status of the contract. (Refer to the previous box on type of information required.)• DGS/PD will be the repository for all of the software publisher/manufacturer letters when DGS/PD is the approving authority.

Continued on next page

Topic 5 – Proprietary Software Purchases, Continued

5.5.1 New proprietary software (continued)

If the software purchase	Then the department
Is requested by a department without IT purchasing authority	<ul style="list-style-type: none">• Must submit the transaction to DGS/PD on a Purchase Estimate (STD.66) for DGS/PD to conduct the procurement and execute the contract.• Must obtain and provide all supporting documentation to DGS/PD in support of the non-competitive status of the contract. (Refer to the previous box on type of information required.)• DGS/PD will be the repository for all of the software publisher/manufacturer letters when DGS/PD is the approving authority.

5.5.2 Obtaining software letters and the LPA process

The requirement to obtain a signed letter from the software publisher and/or manufacturer stating the proprietary nature of the product is applicable for acquisitions of existing proprietary software maintenance or acquisitions of new proprietary software, software maintenance, and/or upgrades purchases available on LPA contracts such as MA, CMAS or the Software License Program (SLP). Proprietary in this sense means there are no other available known sources to obtain the software outside of the LPA process.

5.5.3 Fair and reasonable documentation

As indicated by [SAM](#) section 1233, purchases although exempt by statute or policy, must still be reasonable in cost and justification. It is recommended that procurement files should include documentation to support fair and reasonable pricing for all proprietary software, software maintenance and/or upgrade purchases, regardless of value.

Topic 6 – Purchases Exempt from the NCB Contract Process

5.6.0 Purchases exempt by statute or policy

In addition to what has already been discussed, there are purchases that may be awarded without advertising or competitive bidding as a result of being exempt by statute or policy. For a list of these types of purchases, refer to SAM section 1233.

Although exempt by statute or policy, the purchasing authority dollar thresholds still apply. Purchases that exceed a department's purchasing authority, or for departments without any type of purchasing authority, must be submitted to DGS/PD for review, approval, and execution.

5.6.1 Additional purchases exempt by DGS policy

The following purchases may be awarded without advertising or competitive bidding subject to the restrictions noted. These purchases are exempt based on a determination by DGS that competitive bidding is not feasible. Although exempt by DGS policy, the purchasing authority dollar thresholds still apply.

Purchases that exceed departments purchasing authority or departments without any type of purchasing authority must submit these purchases to DGS for review, approval, and execution:

- Proprietary subscriptions, proprietary publications and/or technical manuals (manuals, law books, technical manuals, technical services related to publications, etc.) regardless of media format, up to \$250,000.00.
 - Rental of proprietary postage meters, if they are interfaced and inter-membered with existing mailing equipment and there is only one authorized manufacturer's branch or qualified dealer representative providing services for a manufacturer in a specified geographical area. This exemption applies only in circumstances where annual postage meter rental services to be provided are less than \$100,000.00.
-

5.6.2 Supporting statement

Procurement files should include a statement indicating the basis for exemption from advertising or competitive bidding either by policy or statute. Documentation can be a statement of fact identifying how the exemption is authorized.

Example #1

"This purchase is exempt from advertising and/or competitive bidding based on DGS policy as identified in SAM section 1233 Article 3.e."

Example #2

"This purchase is exempt from advertising and/or competitive bidding based upon the use of a master agreement that has been competitively bid and identified as such either in the MA user instructions or in the DGS Statewide checklist dated XXXXXX."

Continued on next page

Topic 6 – Purchases Exempt from the NCB Contract Process, Continued

5.6.3 Cost reasonableness

As indicated by [SAM](#) section 1233, purchases although exempt by statute or policy, must still be reasonable in cost and justification. It is recommended that procurement files should include documentation to support fair and reasonable pricing

Topic 7 – Procurement Approach for Exempt and NCB Contract Activities

5.7.0 Obtaining pricing

Buyers conducting procurements for transactions that are exempt from competitive bidding or advertising or that are NCB contract purchases shall obtain a written offer and acceptance of the state's terms and conditions when transacting business with the only known supplier of the non-IT/IT goods and/or IT services.

5.7.1 Creating a solicitation

The written offer and acceptance may be obtained by having the supplier respond to a solicitation document that is only provided to the one supplier. The RFQ format as provided in [Chapter 4](#), Section B, Topic 3. A buyer also has the option to develop their own solicitation document that contains the following elements:

- Identify the date and time the response is due.
- Provide the details of the purchase, including quantities, description, support coverage, coverage dates, etc.
- Include either by fill-in space or a cost sheet for the supplier to provide pricing
- Request the signature of the authorized supplier representative that can bind the company contractually.
- Include either by reference or hardcopy the applicable state General Provisions and any additional contract modules (specific to IT goods and service) or special provisions applicable to the department.

Buyers using this solicitation approach when conducting business with the only known supplier must provide the supplier with an opportunity to review and accept the state terms and conditions prior to the State executing a purchase document. This practice avoids the possibility of a dispute with suppliers once the purchase document is executed.

5.7.2 Supplier contracts and forms

Contract forms, license agreements or ordering documents provided by suppliers should not be signed by state employees. These most often contain terms and conditions inconsistent and results in conflict with the State's contract terms and conditions.

5.7.3 Signing a suppliers' software licenses is prohibited

Departments are prohibited from signing a supplier's software license agreement. A review of the supplier's software license must take place before a supplier's software license agreement may be considered for incorporation into a purchase document.

Buyers must seek department legal advice and contact PAMS for assistance.
